**3rd STEP GRIEVANCE**

**To:** Click or tap here to enter text.

**From: President, AFGE Local** Click or tap here to enter text.

**Re: *AFGE Local*** Click or tap here to enter text. ***vs. the Department of Veterans Affairs,*** Click or tap here to enter text.**regarding the Agency’s failure to meet its bargaining obligations when it unilaterally implemented the space and equipment provisions of EO 13837**

**Date:** Click or tap to enter a date.

**STATEMENT OF CHARGES**

Pursuant to the provisions of Article 43 of the Master Agreement Between the Department of Veterans Affairs and the American Federation of Government Employees (2011) (“MCBA”), American Federation of Government Employees Local Click or tap here to enter text. (“Union”) is filing this 3rd Step Grievance against all associated officials and/or individuals acting as agents on behalf of the Department of Veterans Affairs, Click or tap here to enter text. (“Department” or “Facility”) for its failure to meet its bargaining obligations when it unilaterally implemented the space and equipment provisions of EO 13837.

To date, the Facility has failed to remedy these violations, and as such, continues to violate locally negotiated agreements, past practices, and federal law. Specifically, the Agency violated Click or tap here to enter text., 5 U.S.C. §7116(a)(1), (2), (5), (7), and (8), and any and all other relevant laws, regulations, and past practices not herein specified.

**VIOLATIONS**

On May 25, 2018, President Trump issued EO 13837: Ensuring Transparency, Accountability, and Efficiency in Taxpayer Funded Union Time. Exec. Order No. 13837, 83 Fed. Reg. 106 (June 1, 2018). Relevant to this grievance, the EO prohibits the Union’s use of free or discounted property when such property is not also available to employees for other non-Department business. This prohibition conflicts with numerous provisions providing for use of VA property in the MCBA, including, but not limited to, Article 51.

On November 15, 2019, the Agency notified the National VA Council that it would be implementing the provisions of EO 13837 and offered only post-implementation bargaining. The Notice stated that it would provide rental rates to the Union by December 13, 2019. It also stated that the Union would be required to provide its notice of whether it will vacate or rent the space by January 10, 2020. Finally, it notified the Union that it would evict the Union or begin charging the Union rent for the use of space by January 31, 2020.

Notably, the current MCBA is in full force and effect and was in full force and effect at the time of the issuance of the EO. Specifically, the Duration of Agreement clause provides that the Agreement is automatically extended until a new agreement is negotiated. Such extension of the MCBA includes locally negotiated agreements, MOUs, and past practices. While the parties have begun renegotiations of the Master Agreement, to date, renegotiation has not been completed.

*Violation of VA’s Own Notice*

The Department has violated its own notice, by failing to provide the rates by December 13, 2019. The Department provided notice to the National VA Council on December 20, 2019. Although those same rates were provided to Facility Management, Facility Management also failed to notify the Local of the rates. Further, Facility Management provided inaccurate measurements of the Local’s space. (Include all relevant items:) by including space for other Unions, space the Union does not utilize exclusively, such as bathrooms and meeting rooms, or simply the wrong square footage)

By failing to provide the rates by December 13, 2019, the Local was prevented from verifying the space attributed to it to make an informed decision.

*Statutory Violations*

The Facility’s implementation of a change in conflict with terms of the Master Agreement constitutes a repudiation of the Agreement and an illegal enforcement of a rule or regulation inconsistent with a valid collective bargaining agreement. It also discriminates against employees for union activity and interferes with, constrains, and coerces employees in violation of the Federal Sector Labor Management Relations Statute.

*Violation of the Executive Order*

The Facility is also violating the plain language of the EO. The EO explicitly states that “Each agency shall implement the requirements of this order . . . to the extent permitted by law and consistent with their obligations under collective bargaining agreements in force on the date of this order.” Sec. 8(a). Further, it states “[n]othing in this Order shall abrogate any collective any collective bargaining agreement in effect on the date of this order.” Sec. 9(a).

Here, the Master Agreement is in full force and effect. Thus, the implementation of the EO would have been properly addressed during national-level negotiations. The Department has failed to negotiate the implementation during negotiations over the successor Master Agreement. Further, the Facility has also failed to negotiate the repudiation of the Local Supplemental Agreement, Local MOUs/MOAs, and Local past practices.

Further, the Department provides free or discounted property to employees when acting on behalf of several non-Federal organizations. This Facility provides free or discounted space and equipment to: (List other entities like SEA, NOVA, VAEA, etc.) As a result, the condition in the EO has been satisfied and the Local should continue to use its space and equipment.

Alternatively, the EO states that discounted use of government property means “charging less to use government property than the value of the use of such property, as determined by the General Services Administration, where applicable, or otherwise by the generally prevailing commercial cost of using such property.” Sec. 2(d). Here, the Department has provided “prevailing market rates” using a “CoStar database, a nationally recognized commercial real estate firm.” No GSA rates are listed, and prevailing market rates are not consistent with the requirement of the use of commercial cost rates. Also, the Facility has failed to include the option for rental of the equipment and parking spaces. Much of the equipment and furniture are old and not able to be used by a subsequent party. Removal of such property is nothing more than wasteful and for the specific purpose of harassing the Local.

Clearly, the Facility has either misread the EO or misconstrued its provisions which prohibit implementation without bargaining. NVAC continues to await its opportunity to bargain at the national level. Not necessary, but you may include: The Local rejects any claim that the Facility is without authority to follow the law. It is the Facility that took measurements and it is the Facility that will carry out the eviction and recoupment of equipment. Therefore, the Facility has the authority to correct these violations.

By failing to fulfill its obligations and by unilaterally implementing EO 13837, the Facility has violated, and continues to violate, the following:

* Click or tap here to enter text.;
* 5 U.S.C. §7116(a)(1): prohibiting an agency from interfering with an employee’s exercise of a right under the FSLMRS;
* 5 U.S.C. §7116(a)(2): prohibiting an agency from discouraging membership in a labor organization by discriminating in connection with any conditions of employment;
* 5 U.S.C. §7116(a)(5): requiring an agency to consult or negotiate in good faith with a labor organization regarding changes in conditions of employment and prohibiting an agency from repudiating a collective bargaining agreement;
* 5 U.S.C. §7116(a)(7): prohibiting an agency from enforcing any rule or regulation in conflict with an applicable collective bargaining agreement;
* 5 U.S.C. §7116(a)(8): prohibiting an agency from otherwise failing or refusing to comply with the FSLMRS;
* Exec. Order No. 13837: requiring the Agency to satisfy its obligation to bargain in good faith in attempting to bring the MCBA into conformance with the executive order and requiring the use of GSA rates or commercial cost; and,
* Any and all other relevant, laws, regulations, customs, and past practices not herein specified.

**REMEDY REQUESTED**

The Union asks that, to remedy the above situation, the Facility agrees to the following:

* To maintain *status quo* until bargaining obligations are met at the national level;
* To cease and desist from any actions that abrogate its responsibilities under existing law and the MCBA;
* To fully comply with its obligations under Click or tap here to enter text.;
* To make the Local whole, including, but not limited to, reimbursement of: any and all rental monies paid to the Department; or out-of-pocket expenses paid to a third-party resulting from eviction or the Local’s choice not to pay rental monies to the Department; or, alternatively, the difference between the stated rates and the relevant GSA rate or commercial cost rate;
* To agree to any and all other remedies appropriate in this matter; and,
* Any selected arbitrator maintain jurisdiction for clarification and any continuing violations.